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CENTRAL FAX CENTER**

OCT 26 2006

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS**

In re Application of: Maniaci, David)	Date:	October 26, 2006
)		
Serial No.: 10/649,691)	Group Art Unit:	3727
)		
Filed: 08/28/2003)	Examiner:	Eugene Lhymn
)		
Title: Cupholding Plate)		

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, PO Box 1450, Alexandria, VA 22313-1450.

Name: _____

Date _____

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313

Dear Sir:

This is a response to a Notification of Non-compliant Appeal Brief, dated 09/26/2006, of an appeal from the Final Rejection, dated 02/24/2006 for the above identified application.

REAL PARTY IN INTEREST

The real parties of interest in this appeal is Handfree, Inc., a Texas Corporation, the assignee of the entire right, title, and interest of this invention.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Currently pending are claims 1-6 which were all finally rejected, which is herein under appeal.

STATEMENT OF AMENDMENTS

There have been no supplemental amendments filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Referring now to the Figures 1-3, a cupholding plate, generally noted as 20 according to a preferred embodiment of the present invention is shown having a conventional, generally circular form. The plate 20 is bounded about its periphery 22 circumscribing the entire plate support surface 24. Bordering the edge 22 is a circular outer flange 26. As shown best in FIG. 3, the outer flange 26 is elevated above the plate support surface 24, and is connected thereto by an upwardly curving peripheral rim 28. The combination of the circular outer flange 26 and upwardly curving peripheral rim 28 provide sufficient strength to the support surface 24 such as to allow the surface

24 to be loaded with a significant amount of weight, relative to the weight of the plate 20 itself, without sagging, twisting or collapsing.

A pair of partition elements, shown as a first partition element 30 and a second partition element 32, connect at a centerpoint "C" and radiate out to the periphery 22. Each partition element 30, 32 have a flat upper apex 34 connecting to the circular outer flange 26 at the flanges elevation, and transitions smoothly to the elevation of the plate support surface 24 by a curving partition sidewall 36 having a similar curvature with the upwardly curving peripheral rim 28. The partition elements 30, 32 form an acute angle at centerpoint "C" at the base of the partition sidewall 36. A first large compartment 38 is formed at the acute angle between the partition elements 30, 32 and the outer flange 26.

Further, positioned such as to intersect at the outer circumference of the plate 20 is formed a cup retaining orifice 40, which is itself circumscribed by a stiffened cup support rim 42. In order to obtain the improved structural rigidity, while at the same time maximizing the available plate support surface 24 for any given plate size, the cup support rim 42 intersects with the circular outer flange 26 at the plate edge, such that both the outer flange 26 and the cup support rim 42 can be superimposed about each other along a small arc along their respective circumferences. Opposite the outer connection point between the cup support rim 42 and outer flange 26 is a third partition element 44 connecting the cup support rim 42 with the flat upper apex 34 of the other partition elements 30, 32. The third partition element 44 has a flat upper apex 34 that transitions smoothly to the elevation of the plate support surface 24 by a curving partition sidewall 36 having a similar curvature with the upwardly curving peripheral rim

28. The partition elements 30, 32 44 form an acute angle at centerpoint "C" at the base of the partition sidewall 36. A first small compartment 46 and a second small compartment 48 are thereby formed.

Referring to FIG. 7-9, a single compartmented cupholding plate is depicted having an overall rectangular shape. Such a shape is conventionally known for plates, and especially disposable type plates, and this embodiment depicts all the present teachings incorporated therein.

Referring now to FIG. 4-5, similarly shown is a first alternate embodiment depicting only one compartment partition element 50 is included in a manner that provides all the same benefits of the preferred embodiment, with the added feature of separate food containing compartment placed permanently therein. It is envisioned that the separation channel spans between the circular outer flange 26 and the cupholding rim 42 through the centerpoint "C" in a manner that prevents decreases in structural integrity nor interferes with the functionality of the other disclosed features. In such a configuration, two equally sized compartments 52 are thereby formed on the plate support surface 24.

As shown in FIG. 6-7, the cupholding plate 20 depicting a single compartmented plate absent any partition elements. As shown in FIG. 6-7, the cupholding plate 20 depicting a single compartmented plate indicates a first, standard embodiment that can be manufactured of permanent or disposable material in any conventional manner.

Finally, it is the intent of the present invention to incorporate the function and features with conventional fabrication methods and elements. To this end, it is envisioned that the cupholding plate of the present invention can be integrally formed

into a single structural element, and made of a conventional permanent plate material, such as plastic, china, and the like, or a conventional disposable material, such as foam, paper, pressed paper, or plastic.

Mapping of Independent Claims

Claim 1. *See Fig. 1-3*

A cupholding plate comprising:

a plate support surface having a peripheral edge; Page 5, lines 13, reference numeral 22

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces; Page 5, line 14, reference numeral 26

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange; Page 5, line 15-16, reference numeral 28

a pair of partition elements connect at a centerpoint of said plate support surface and radiating out to said outer flange, each partition element having a flat upper apex connecting to said circular outer flange at the flanges elevation, and transitions smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim; Page 6, lines 1-9, reference numerals 30, 32

said partition elements forming an obtuse angle at said centerpoint at a base of said partition sidewall such that a first large compartment is formed between the partition elements and the outer flange; Page 6, lines 8-9, reference numeral 38

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim; Page 6, line 11, reference numeral 40

a stiffened cup support rim circumscribing said cup retaining orifice; Page 6, line 12, reference numeral 42

a third partition element connecting said cup support rim with said flat upper apex of said other partition elements, said third partition element having a flat upper apex that transitions smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim; Page 6, lines 12-20 and

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences. Page 6, lines 11-12

Claim 3 - See Figures 4-5. Specification page 7, lines 10-18.

A cupholding plate comprising:

a plate support surface having a peripheral edge; Page 5, lines 13, reference numeral 22

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces; Page 5, line 14, reference numeral 26

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange; Page 5, line 15-16, reference numeral 28

a single partition elements bisecting said plate support surface through a centerpoint of said plate support surface between said outer flange, said partition element having a flat upper apex connecting to said circular outer flange at the flanges elevation, and transitions smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim; Page 7, lines 10-13, reference numeral 50

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim; Page 6, line 11, reference numeral 40

a stiffened cup support rim circumscribing said cup retaining orifice; Page 6, line 12, reference numeral 42

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences. Page 6, lines 11-12

Claim 5.

A cupholding plate comprising:

a plate support surface having a peripheral edge; Page 5, lines 13, reference numeral 22

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces; Page 5, line 14, reference numeral 26

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange; Page 5, line 15-16, reference numeral 28

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim; Page 6, line 11, reference numeral 40

a stiffened cup support rim circumscribing said cup retaining orifice; Page 6, lines 11-12

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences. Page 6, lines 12-17

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Rejection of February 24, 2006:

Claims 1-2 were rejected as being unpatentable over Mann (U.S. Des. 351316) in view of U.S. Des. 242106) in further view of Caner (U.S. Des. 242106) and in further view of Perlis et al. (U.S. 5803305);

Claims 3-4 were rejected under 35 U.S.C. 103(a) as being unpatentable over

Brundage (U.S. 3955672) in further view of Caner (U.S. Des. 242106) and in further view of Perlis et al. (U.S. 5803305);

And, Claims 5 -6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Brudnage in view of Perlis et al.

ARGUMENT

1. Rejections under 35 U.S.C. 103(a)

The art the examiner has relied upon as the basis for various rejections include:

U.S. Patent No. 3,955,672 to Brundage is directed to a plate with the capability of holding a cup. The plate is designed to have the cup go through the cup area. The cup, or an enclosure of the cup, is positioned so the hand can grasp it. The cup is grasped so the plate can be balanced on the user's forearm.

U.S. Design Patent No. 242,106 to Caner is directed to a plate. This plate has food compartments that are lower then the plate structure and are connected in a smooth and curved manner.

U.S. Design Patent No. 351,316 to Mann is directed to a plate. This plated is decorative in design and has a shallow area for holding the cup as well as areas for holding food products.

U.S. Patent No. 5,803,305 to Perlis et al. is directed to a plate with a cup holder. There is a general food compartment with a separate compartment for the cup. The cup support area is raised above the rest of the plate structure and the cup support must be enclosed.

However, difference exist between the present invention as described in claims

1-6 and these references. For example in reference to Claim 1:

- Mann does not seem to disclose the specific connection at the center point as disclosed in this claim. The curvature of the pieces seem different then what is disclosed in this invention. There is specific curvature in the cited reference that does not seem to teach the angular requirements of this claim.
- The examiner states that Brundage does not teach smooth transition between partition and plate support. This seems to go against the assertion that Brundage teaches "An upwardly curving peripheral rim connection between said plate support surface and said outer flange" in Fig. 3. Note, the design of Mann has a very shallow cup area.
- None of the cited reference teach a cup holding area where the bottom area is open.

In reference to Claim 2:

- Two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

In reference to Claims 3 and 4, they were rejected as being unpatentable over Brundage (U.S. 3955672) in view of Caner (U.S. Des. 242106) and in further view of (U.S. 5803305). In Claim 3, the examiner states that Brundage does not teach smooth

transition between partition and plate support. This seems to go against the assertion that Brundage teaches "An upwardly curving peripheral rim connection between said plate support surface and said outer flange" in Fig. 3. Also, the examiner does not cite a figure for "A plate support surface having a peripheral edge"

In reference to Claim 4, two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

The examiner made a §103(a) rejection on claims 5 and 6 as being unpatentable over Brundage in view of Perlis et al. Regarding Claim 5, the examiner states that Brundage does not teach smooth transition between partition and plate support. This seems to go against the assertion that Brundage teaches "An upwardly curving peripheral rim connection between said plate support surface and said outer flange" in Fig. 3.

In reference to Claim 6, two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon

obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

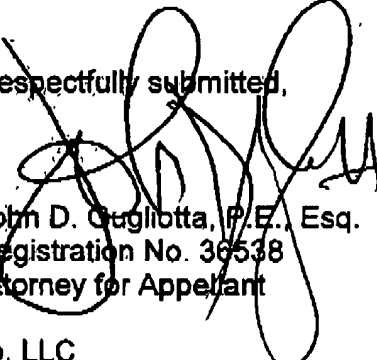
There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making a support apparatus for rollout awnings according to the present invention. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (CAFC 1988). The Examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present

disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,



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CLAIMS APPENDIX

The claims on appeal are as follows:

1. A cupholding plate comprising:

a plate support surface having a peripheral edge;

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces;

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange;

a pair of partition elements connect at a centerpoint of said plate support surface and radiating out to said outer flange, each partition element having a flat upper apex connecting to said circular outer flange at the flanges elevation, and transitions smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim;

said partition elements forming an obtuse angle at said centerpoint at a base of said partition sidewall such that a first large compartment is formed between the partition elements and the outer flange;

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim;

a stiffened cup support rim circumscribing said cup retaining orifice;

a third partition element connecting said cup support rim with said flat upper apex of said other partition elements, said third partition element having a flat upper

apex that transitions smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim;
and

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences.

2. The cupholding plate of Claim 1, wherein said cupholding plate is formed of a single structural element that is formed of a material selected from the group comprising foam, paper, pressed paper, and plastic.

3. A cupholding plate comprising:

a plate support surface having a peripheral edge;

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces;

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange;

a single partition elements bisecting said plate support surface through a centerpoint of said plate support surface between said outer flange, said partition element having a flat upper apex connecting to said circular outer flange at the flanges elevation, and transitions smoothly to the elevation of the plate support surface by a

curving partition sidewall having a similar curvature with the upwardly curving peripheral rim;

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim;

a stiffened cup support rim circumscribing said cup retaining orifice;

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences.

4. The cupholding plate of Claim 3, wherein said cupholding plate is formed of a single structural element that is formed of a material selected from the group comprising foam, paper, pressed paper, and plastic.

5. A cupholding plate comprising:

a plate support surface having a peripheral edge;

a stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces;

an upwardly curving peripheral rim connecting between said plate support surface and said outer flange;

a cup retaining orifice formed within said plate support surface and positioned such as to intersect at the outer circumference of the outer flange rim;

a stiffened cup support rim circumscribing said cup retaining orifice;

a stiffened cup support rim contained within the outer circumference of the plate is a cup retaining orifice and wherein said cup support rim intersects with said peripheral rim at said plate peripheral edge, such that both said peripheral rim and said cup support rim are superimposed about each other along a small arc along their respective circumferences.

6. The cupholding plate of Claim 5, wherein said cupholding plate is formed of a single structural element that is formed of a material selected from the group comprising foam, paper, pressed paper, and plastic.

EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDING

None